

ISSUE DATE: February 19, 1999

DOCKET NO. P-5480, 421/M-98-1869

ORDER REJECTING INTERCONNECTION AGREEMENT, REQUIRING FURTHER  
FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayer  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of an Application for Approval of  
an Interconnection Agreement Adopted Under  
the Federal Telecommunications Act of 1996,  
Section 252(i)

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**PROCEDURAL HISTORY**

On December 17, 1998, Intermedia Communications, Inc. (Intermedia) and U S WEST Communications, Inc. (USWC) filed the interconnection agreement.

On December 23, 1998, the Minnesota Department of Public Service (the Department) filed comments recommending that the Commission reject Intermedia's and USWC's (the Companies') proposed agreement unless a number of changes are made.

The Commission met on February 2, 1999 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. THE COMPANIES' AGREEMENT**

Intermedia has elected to adopt an existing interconnection agreement, specifically, the AT&T / U S WEST arbitrated agreement approved by the Commission on March 17, 1997 (Docket Nos. P-442, 421/M-96-885; P-5321, 421/M-96-909; P-3167, 421/M-96-729). This agreement encompasses the resale of services and the interconnection of facilities.

**II. THE DEPARTMENT'S CONCERNS**

The Department raised concerns regarding the following parts of the Companies' Agreement: Part A, Section 11.1 (Dispute Resolution); Part A, Section 12.1 (Nondisclosure); Part A, Section 21 (No Third Party Beneficiaries); Part A, Section 26 (Amendments); Part A, Section 23 (Amendment/Subcontracting); and Part A, Section 2.3 (Payment and Deposit).

### **III. COMMISSION ANALYSIS**

#### **A. Dispute Resolution**

The Commission will not require that the Companies include language, as recommended by the Department:

The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof subject to review by the Commission. The parties shall submit a copy of each arbitration opinion to the Commission, the Department of Public Service, and the Office of the Attorney General, Residential and Small Business Utilities Division. The arbitrator's decision shall remain in effect unless the Commission acts to suspend, modify or reject the decision within 45 days.

The Commission acknowledges that it has required this language in some previous Orders, but only in cases where the parties' agreement as drafted evidenced an intent to make the independent arbitrator's decision final and binding. It was this expression of intent that led the Commission to find that the sections in question were contrary to the public interest and required corrective language.

#### **B. Nondisclosure**

The Department recommended that the Commission require the inclusion of the words "to the extent permitted by law" in the section regarding nondisclosure. The Commission acknowledges that in some interconnection agreement Orders it has required this language. However, upon reflection, the Commission does not now view this language as mandatory. The companies are bound by the law whether they acknowledge it or not and have not evinced ignorance of or an intention to violate the law.

#### **C. No Third Party Beneficiaries**

The Companies' Agreement contained the following language in this regard:

The Commission, on behalf of the public, is a third-party beneficiary of this Agreement and is entitled to receive notice of, and to intervene in, any lawsuit that is filed pertaining to this Agreement.

The Department recommended additional language to stress and further assure that the Companies would give the Commission notice of lawsuits and other proceedings involving or arising under the Agreement.

The Commission finds the Companies' language adequate and will not reject it as contrary to the public interest.

#### **D. AMENDMENTS**

The Companies' Agreement stated:

No amendment, waiver, or consent to default under this Agreement shall be effective without approval of the Commission.

The Department proposed language requiring Commission approval of any amendment, waiver, or consent.

The Commission finds the Companies' language adequate and will not reject it as contrary to the public interest.

#### **E. Assignment/Subcontracting**

The Department recommended that the Commission require that following language be included in the agreement:

The Party making the assignment shall notify the Commission 60 days in advance of the effective date of the assignment.

The Commission finds that the absence of such language in the Companies' Agreement is contrary to the public interest. Such notice is required to allow the Commission to exercise its role, with respect to provision of service by an assignee, as protector of the public interest.

#### **F. Payment and Deposit**

The Department recommended requiring language to assure that the Commission would receive notice of defaults in payment and to assure that no service will be disconnected without Commission approval. The Department suggested adding such language to the Payment and Deposit section.

The Commission finds that absence of such language is contrary to the public interest. It is very important to assure the Commission's role in protecting the public interest in the context of default and possible disconnection of service, since these circumstances so directly affect continuity of service to the public. The Commission will require such language, but will direct that it be placed in a separate Default Section to avoid the possible misconstruction that the provision only applied to defaults due to non-payment. Language to the following effect would correct the deficiency:

- a. If either Party defaults on the Agreement the other Party must notify the Minnesota Public Utilities Commission in writing, and
- b. Neither Party shall disconnect service to the other Party without Commission approval.

#### **IV. COMMISSION ACTION**

Consistent with the preceding analysis, the Commission will reject the proposed agreement, noting appropriate corrective language as stated above. In addition, the Commission will direct the parties to either refile for approval under § 252(e), within two weeks of this Order, an agreement that corrects the deficiencies identified by the Commission or, if the parties cannot agree on language that corrects these deficiencies consistent with the Order, file a notice to that effect with the Commission within two weeks of the date of this Order. The contract will be effective on the date the parties file a conforming agreement.

#### **ORDER**

1. The interconnection agreement proposed by Intermedia Communications, Inc. (Intermedia) and U S WEST Communications, Inc. (USWC) is rejected for reasons stated in the text of this Order.
2. Within two weeks of the Commission's Order, Intermedia and USWC (the Companies) shall either refile for approval under § 252(e), an executed agreement that corrects the deficiencies identified by the Commission or, if they cannot agree on language that corrects these deficiencies consistent with the Order, file a notice to that effect.
3. The Companies' refiled contract shall be effective on the date the parties file a conforming agreement, i.e. one consistent with this Order.
4. The Executive Secretary shall have authority to
  - a. determine whether the revised contract, as filed, corrects the deficiencies as indicated at the hearing; and
  - b. send the parties a letter confirming approval of the contract.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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